

HOUSE SELECT COMMITTEE TO STUDY THE RECOVERY OF CIVIL COSTS



**FINAL REPORT TO THE
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

December 2006

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STATE OF NORTH CAROLINA
HOUSE SELECT COMMITTEE TO STUDY THE RECOVERY OF
CIVIL COSTS



December 18, 2006

TO THE MEMBERS OF THE 2007 North Carolina House of Representatives:

Attached for your consideration is the report of the House Select Committee to Study the recovery of Civil Costs established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1).

Respectfully submitted,



Representative Rick Glazier

Chair



James B. Black
Speaker



Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE TO STUDY THE RECOVERY OF CIVIL COSTS

**TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES**

Section 1. The House Select Committee to Study the Recovery of Civil Costs (hereinafter "Select Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6 and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Section 2. The Select Committee shall be composed of the seven members listed below and appointed by the Speaker of the House of Representatives.

Representative Rick Glazier, Chair
Representative Deborah K. Ross, Vice Chair
Representative Jean Farmer-Butterfield
Representative Phillip Haire
Representative Earl Jones
Representative Tim Spear
Representative Bonner Stiller

Section 3. The Select Committee shall review and recommend a resolution to the conflict in North Carolina law regarding the recovery of costs in a civil case. The Select Committee shall study the conflict between G.S. 6-20 and G.S. 7A-305 and the appellate cases interpreting those statutes and recommend revisions to one or both statutes to resolve the conflict.

Section 4. The Select Committee shall meet upon the call of its Chair. A quorum of the Select Committee shall be a majority of its members, including the Chair.

Section 5. Members of the Select Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1. The expenses of the Select Committee including per diem, subsistence, travel allowances for Select Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations.

Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Select Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Select Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 6. The members of the Select Committee serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives shall fill vacancies and may dissolve the Select Committee at any time.

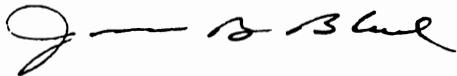
Section 7. The Legislative Services Officer shall assign professional and clerical staff to assist the Select Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Select Committee.

Section 8. The Select Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Select Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Section 9. The Select Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Select Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Select Committee may submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before December 31, 2006, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Select Committee shall terminate on December 31, 2006, or upon the filing of its final report, whichever occurs first.

Effective this 20th day of November, 2006.



James B. Black, Speaker

SUMMARY OF COMMITTEE PROCEEDINGS

House Select Committee to Study the Recovery of Civil Costs
December 11, 2006 - 1:00 pm - Room 414
Rep. Glazier, presiding

At the December 11, 2006 meeting, Committee Co-counsel Mr. Brad Krehely gave background on the committee's authorization and the apparent conflict in statutory and case law. Mr. Krehely explained that G.S. 6-20 leaves it to the court's discretion to award costs, while G.S. 7A-305 provides a list of costs that may be awarded by the trial court. Mr. Krehely also discussed related statutes addressing the issue of costs. In light of G.S. 6-20 and G.S. 7A-305, the North Carolina Court of Appeals has issued the following three conflicting lines of cases: (1) a strict statutory limit in which costs are not awarded unless set out in G.S. 7A-305; (2) a reasonable and necessary approach in which the court has discretion under G.S. 6-20 to award costs regardless of whether the costs appear on the list in G.S. 7A-305; and (3) a common law approach in which expenses listed under G.S. 7A-305 and also common law expenses recognized prior to 1983 are allowed. Mr. Krehely noted that the Supreme Court has refused to grant discretionary review of the issue. He ended with a brief overview of federal law.

Judge John Jolly, Wake County Superior Court, offered the Committee his thoughts on the issue. Judge Jolly asked the Committee to retain a judge's discretion to award costs if those costs are reasonable and necessary. He indicated the General Assembly needs to provide direction concerning what costs are appropriate. Otherwise, "mini-trials" of lawyers on the issue of costs could result.

Mr. Mark Boynton spoke to the Committee on behalf of the North Carolina Bar Association. He agreed that a judge's discretion should be retained but that some costs, such as deposition costs, should not be allowed without qualification. Mr. Boynton stated that the Bar Association has no official position on this issue, but is anxious to address the problem.

Mr. Dick Taylor, Chief Executive Officer, North Carolina of Trial Lawyers, indicated the Academy's support for discretion on the part of trial judges to award costs if the costs are reasonable and necessary. He also spoke in favor of including additional costs such as deposition costs, expert witness fees and some travel costs. However, he indicated that these costs should not be "open-ended."

Mr. Steve Coles, North Carolina Association of Defense Attorneys, told the Committee that the Bar Association, Academy of Trial Lawyers and Association of Defense Attorneys could work together to craft a solution to this issue. He suggested that a judge's discretion should be retained within outer limits provided by statute. Additional statutory clarification for some costs such as expert witness fees and deposition costs may be needed.

Rep. Glazier noted that this is an issue in need of legislative action. After some brief comments from Committee members, the Committee adjourned to meet again on Monday, December 18, 2006.

House Select Committee to Study the Recovery of Civil Costs
December 18, 2006 - 1:00 pm - Room 414
Rep. Glazier, presiding
The Committee met and approved the final report.

Committee Findings and Recommendations

Findings. The Committee finds that, based on holdings of the North Carolina Court of Appeals, there are three conflicting lines of cases concerning the award of costs under North Carolina law: (1) a strict statutory limit in which costs are not awarded unless set out in G.S. 7A-305; (2) a reasonable and necessary approach in which the court has discretion under G.S. 6-20 to award costs regardless of whether the costs appears on the list in G.S. 7A-305; and (3) a common law approach in which expenses listed under G.S. 7A-305 and also common law expenses recognized prior to 1983 are allowed.

The Committee finds that the North Carolina Supreme Court has refused to address this conflict.

The Committee finds that a judge's discretion to award costs should be retained, but only if those costs are recoverable by statute.

The Committee also finds that the types of costs authorized by statute should be expanded to include costs such as mediator costs, deposition costs, and expert witness fees. The Committee finds that some costs should not be "open-ended." Rather, outer limits should be provided by statute including a requirement that the cost be reasonable and necessary and other statutory directives.

Recommendations. The Committee recommends legislation retaining a judge's discretion to award costs under G.S. 6-20, if the costs are recoverable under G.S. 7A-305. In addition the Committee recommends expanding the list of recoverable costs under G.S. 7A-305 to include mediator fees, deposition costs, and expert witness. Deposition costs and expert witness fees must be reasonable and necessary and subject to other limitations as provided in the recommended legislation. (See Legislative Proposal I)

LEGISLATIVE PROPOSAL I

A BILL TO BE ENTITLED AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"§ 6-19. When costs allowed as of course to defendant.

Costs shall be allowed as of course to the defendant, in the actions mentioned in the preceding section—G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"§ 6-20. Costs allowed or not, in discretion of court.

~~In other actions, costs~~ Costs may be allowed ~~or not~~, in the discretion of the court ~~court, unless otherwise provided by law, subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), except as otherwise provided by the General Statutes.~~

SECTION 3. G.S. 7A-305(d) reads as rewritten:

~~"(d) The following expenses, when incurred, are also—assessable or recoverable, as the case may be:~~ be. The expenses set forth in this subsection are complete and exclusive, and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

- (1) Witness fees, as provided by law.
- (2) Jail fees, as provided by law.
- (3) Counsel fees, as provided by law.
- (4) Expense of service of process by certified mail and by publication.
- (5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.
- (6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.
- (7) Fees of mediators appointed by the court or agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall

include reasonable reimbursement for stenographic assistance, when necessary.

- (8) Fees of interpreters, when authorized and approved by the court.
- (9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.
- (10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.
- (11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings."

SECTION 4. This act becomes effective May 1, 2007, and applies to all motions for costs filed on or after that date.



